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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,848	08/07/2003	Lap-Wai Chow	B-4505NP 620843-6	3340
36716	7590	03/17/2005	EXAMINER	
LADAS & PARRY 5670 WILSHIRE BOULEVARD, SUITE 2100 LOS ANGELES, CA 90036-5679			CAO, PHAT X	
			ART UNIT	PAPER NUMBER
			2814	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/637,848	CHOW ET AL.	
	Examiner Phat X. Cao	Art Unit 2814	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 November 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 6-12 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 and 16-18 is/are withdrawn from consideration.
- 5) Claim(s) 6-9 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/04,7/04,9/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

1. The cancellation of claims 1-5 and 13-15 in Paper filed 11/22/04 is acknowledged.

### *Election/Restrictions*

2. Applicant's election with traverse of Group I, claims 6-9 in the reply filed on 11/22/04 is acknowledged. The traversal is on the ground(s) that a second restriction requirement is improper because Applicant has not amended the claims or added the new claims. This is not found persuasive because as asserted by Applicant "according to MPEP 811.02 'a second requirement may be made when it becomes proper'." Therefore, the restriction is proper at any stage of prosecution up to final action, and it is not necessary that the second restriction can only be made when the claims are amended or the new claims are added as asserted by Applicant. It is noted that the current restriction requirement is proper and necessary because at the time of issuing a first restriction requirement, the examiner could not predict that the Applicant will elect the process claims (claims 6-12 and 16-18), but not the product claims (claims 13-15).

The traverse is also on the ground that "the Examiner, by simply repeating portions of the language of independent claims 6, 10, 12 and 16, has merely concluded that the species as claimed are distinct and has not provided the requisite reasons for the conclusion." This is also not persuasive because it is necessary for the examiner to set forth the distinct methods by repeating portions of the claims language in order to justify the requirement for the elections. The burden is on the Applicant to show that the distinct methods proposed by the examiner are not distinct species of the claimed

invention. It is noted that searching all pending claims will constitute a serious burden on the examiner because more searches will be required for more distinct methods.

The requirement is still deemed proper and is therefore made FINAL.

***Allowable Subject Matter***

3. Claims 6-9 are allowed.

The prior art of record fails to disclose a method of confusing a reverse engineer comprising the combination of the steps recited in the base claim, including the steps of forming a conductive layer partially over the at least one active region such that an artifact edge of the conductive layer of the false semiconductor device without sidewall spacers mimics an artifact edge of a conductive layer of a semiconductor device having sidewall spacers.

***Conclusion***

4. This application is in condition for allowance except for the following formal matters:
5. This application is in condition for allowance except for the presence of claims 10-12 and 16-18 to an invention non-elected with traverse in the reply filed on 11/22/04. Applicant is requested to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phat X. Cao whose telephone number is (571) 272-1703. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PC  
March 14, 2005

  
PHAT X. CAO  
PRIMARY EXAMINER